

1 Jesse Aron Ross
 2 #1095756-HDSP
 3 P.O. Box 650
 4 Indian Springs
 5 NV. 89070

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CLERK US DISTRICT COURT DISTRICT OF NEVADA	
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7 UNITED STATES DISTRICT COURT
 8 DISTRICT OF NEVADA
 9 (Las Vegas)

11 Jesse Aron Ross, 12 Plaintiff, 13 -VS- 14 Brian Sandoval et al., 15 Defendants	CASE NO: 2:17-CV-02386-APG-GWF * Motion for preliminary Injunction
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 18 COMES NOW above named Plaintiff, appearing
 19 Pro-se, incarcerated and In forma pauperis, to
 20 Respectfully move this court to issue a preliminary
 21 Injunction against the Defendants. This motion is based
 22 upon the papers and pleadings on file, The Attached
 23 memorandum of Points and Authorities and any
 24 oral argument permitted at the hearing of this
 25 Matter

26
 27 Certificate of service Attached.

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1 Memorandum of Points and Authorities

2

3 I. Procedural history

4 A. On September 25 2017 Plaintiff filed A First
5 Amended Complaint ("FAC") in this case, along with
6 a motion to Proceede In forma pauperis.

7

8 II. Table of Authorities

9 A. Fed. Rul. Civ. Pro ("FRCP") Rule 65

10 B. Stuhlberg int'l Sales Co Inc -v- John D. Brush &
11 Co Inc., 240 F.3d 832 (9th cir. 2001) First cited
12 on page Number: 6

13 C. Winter -v- Natural Res. Def. Council Inc., 555
14 U.S. 7, 129 S.Ct 365 (2008) First cited on page Number: 6

15 D. Alliance for the wild Rockies -v- Cottrell 632 F.3d 1127
16 (9th cir 2001) First cited on page Number: 6

17 E. Mazarek -v- Armstrong 520 U.S. 968, 117 S.Ct 1865 (1997)
18 First cited on page Number: 7

19 F. Garcia -v- Google Inc. 786 F.3d 733 (9th cir 2015) 7

20 G. Hartford empire CO -v- United States 323 U.S. 386
21 First cited on page Number: 7

22 H. Shelton -v- National Collegiate Athletic Assn 539 F.2d
23 1197 (9th cir 1976) First cited on page Number: 7

24 I. Lee -v- McManus 543 F.supp 386 D.C. Kansas (1982),
25 First cited on page Number: 6

26 J. Selah -v- Gaard 255 F.supp 2d 92 N.D.N.Y. (2003),
27 First cited on page Number: 9

28

29

1 K. Dixon -v- Bannister 845 F. Supp 2d 1136

2 (D. Nev 2012) First cited on page Number: 8

3

4 L. Hunt -v- Dental Dept, 865 F.2d 198 (9th cir
5 1989) First cited on page number: 8

6

7 M. Estelle -v- Gamble 429 U.S. 97, 97

8 S.Ct 798 (1976) First cited on page number: 8

9

10 N. Helling -v- McKinney 509 U.S. 25, 113 S.Ct

11 2475 (1993) First cited on page Number: 9

12

13 O. Crowley -v- Bannister 739 F.3d 967 (9th cir 2013),

14 first cited on page Number: 9

15

16 P. Jett -v- Penner 439 F.3d 1091 (9th cir 2006) First cited

17 on Page Number: 8

18

19 Q. Chance -v- Armstrong 143 F.3d 698 (2d cir 1995),

20 First cited on page number: 9

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22 R. Title 18 USC section 3626

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III. Questions Presented

- 1) Does a severe tooth ache, with substantial foul tasting discharge constitute a serious medical need, Does the prison have a duty to treat Plaintiffs cavities, that CAUs him severe pain
- 2) What are the consequences of failing to treat Plaintiffs cavities.
- 3) What is a reasonable vs-unreasonable delay in treating cavities that have exposed nerve, and possible infection/abscess.
- 4) What is the minimum standard of care (Dental), required by the Constitution.
- 5) How does the prison litigation reform Act ("PIRA") Apply to this case and request for injunction.

IV. Statement of Facts

A. On 1-21-17, 1-29-17, and 2-6-17, Plaintiff submitted Dental requests to see a dentist at High Desert State Prison ("HPSP"), Plaintiff was seen by Dr. Magapah on 3-27-17, however Dr. Magapah refused to treat All Plaintiffs cavities, and only treated one tooth (see Plaintiffs first Amended complaint ["FAC"] page Number 6-V - Ln 10 to 18 and pg 6-W Line 1 to 15). On 3-30-17 Plaintiff filed an Administrative grievance ("FAC" pg 6-W - Lines 15 to 19). On 04-03-2017 Plaintiff grievance was "upheld" and "Granted", Stating "Please be advised that the Dental Department was notified about your Dental issue

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2 we will Place you on the List to be seen by
3 the dental department regarding your dental problem.

4 Please wait until you get seen on your unit day.

5 Thanks". See EXHIBIT "A" Attached

6 B. As of November 1, 2017 plaintiff has
7 Not been seen by the "HOSP" Dental department,
8 209 days since the grievance was "Upheld", "Granted".

9 C. Plaintiff Has 7-10 visible cavities, 3 of which
10 cause chronic pain, one of those three causes
11 severe pain, with a exposed nerve, and regular
12 foul tasting discharge, eating breathing, drinking
13 is painful, I often wake up due to severe pain.

14 D. There are 2 Dentists for the APPROX. 4,000
15 offenders housed at "HOSP", the Facilities were
16 only Built for 1/2 that number, AS A new Prison
17 Annex was added After the original Prison was
18 constructed.

19 E. ~~the~~ plaintiff received A 30 day prescription for
20 Ibutrofen 600mg for his Broken nose, and even this
21 had minimal effect on the pain, Plaintiff has received
22 No Antibiotics or pain medicine from "HOSP" Dental.

23

24 V Legal Standard.

25 The Federal Rules of Civil Procedure ("FRCP") provide
26 for A Preliminary Injunction "FRCP" Rule 65.

27 Notice must be given to the Adverse Party "FRCP"
28 Rule 65 (A)(1), which Plaintiff has done. see

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1 Attached Certificate of Service. The standard for obtaining
 2 A temporary restraining order and a preliminary injunction
 3 are substantially the same. (Stuhlberg Int'l Sales Co., Inc., v-
 4 John D. Brash & Co Inc., 240 F.3d 832, at 839 N. 7
 5 (9th Cir. 2001)). To Qualify for a preliminary injunction, a
 6 Plaintiff must satisfy A 4 Prong test: ① a likelihood
 7 of success on the merits ② a Likelihood of irreparable
 8 harm ③ The Balance of hardships favor the plaintiff
 9 and ④ an injunction is in the public interest. (Winter v-
 10 Natural Res. Def. Council, Inc., 555 U.S. 7 at 20,
 11 129 S.Ct 365 (2008)). Irreparable harm, the
 12 threat of which is needed to obtain a preliminary
 13 injunction includes physiological pain and or injury,
 14 (Lee v- McManus 543 F.Supp 386 D.C Kansas
 15 1982) Alternatively under the sliding scale approach,
 16 the plaintiff must demonstrate ① serious questions
 17 on the merits ② a Likelihood of irreparable harm
 18 ③ the Balance of hardships tips sharply in the
 19 Plaintiffs favor and ④ an injunction is in the public
 20 interest. (Alliance for the wild Rockies v- Cottrell
 21 632 F.3d 1127 at 1135 (9th Cir. 2011)). In the context
 22 of a civil action challenging prison conditions, injunctive
 23 relief must be narrowly drawn, extend no further than
 24 necessary to correct the harm the court finds requires
 25 Preliminary relief, and to be the least intrusive means
 26 necessary to correct the harm. (18 USC section 3626(A)(2)).
 27 The injunction must give substantial weight to any adverse
 28 impact on public safety or the operation of the criminal
 29

Justice system caused by the injunctive relief,
 and shall respect the principles of comity set out in
 (18 USC section 3626 (A) (1) (B)). It is important to
 Note that Equitable relief by an injunction is
 not penal (Hartford-Empire Co -v- United States
 323 U.S. 386) A preliminary injunction is an
 extraordinary and drastic ~~one~~ remedy, one that should
 not be granted unless the movant by a clear showing,
 carries the Burden of persuasion (Shelton-v-National
 Collegiate Athletic Assn 539 F.2d 1197, 9th Cir. 1976;
 and Mazarek-v-Armstrong 520 U.S. 968 at 972, 117 S.Ct
 1865 1997). Where the moving party requests that
 A preliminary injunction makes the non-moving
 party take affirmative action, A court should
 deny the request UNLESS the facts and law
 clearly favor the moving party. (Garcia-v-google
 Inc., 786 F.3d 733 at 740 9th Cir. 2015)

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19 VI.

20 Issue. Plaintiff has multiple cavities, which cause extreme
 21 pain, difficulty eating, sleeping, drinking. Plaintiff has
 22 made the prison aware of this through dental requests,
 23 grievances and verbally to the dentist. It has been
 24 well over 200 days since plaintiff was granted leave
 25 to be seen by the prison dental department. In addition
 26 to the pain (which on a scale of 1 to 10 is a constant
 27 3 to 7 reaching 10 at times) Plaintiff's cavities
 28 are ~~dis~~ discharging foul tasting fluid, which is

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1 a good indication of infection/Abcess. It is common
 2 lay knowledge that such an infection can cause death
 3 and overtime other major health issues such as
 4 heart disease.

5
 6 Analysis of the Rule of Law to the Facts and issues
 7 The 8th Amendment embodies broad and idealistic concepts
 8 of dignity, civilized standards, humanity and decency, Against
 9 which we must evaluate penal measures. (*Estelle v. Gumble*
 10 429 U.S. 97 at 102, 97 S.Ct 798 (1976)). Thus elementary
 11 principles establish the government's obligation to provide
 12 medical care for those whom it punishes by incarceration
 13 *Estelle* 429 U.S. at 103 A inmate must rely on Prison
 14 Authorities to treat his medical needs, if they fail
 15 to do so those needs will not be met, such a failure
 16 may actually cause physical torture or a lingering death.

17 ID.

18 This Duty to provide medical care extends to
 19 Providing Dental care, As Dental care is one
 20 of the most important medical needs of prisoners,
 21 the denial of which constitutes a violation of the 8th
 22 Amendment (*Dixon v. Bunnister* 845 F. Supp
 23 2d 1136 at 1143 D. Nev 2012; and *Hunt v. Dental*
 24 *Dep't* 865 F.2d 198 200 (9th Cir 1989)).

25 In the CAS at BAR the prison has unreasonably
 26 delayed (for over 200 days) ~~plaintiff~~ Access to
 27 Dental care, which itself violates the 8th Amendment
 28 (*Jett v. Penner* 439 F.3d 1091, 1096 (9th Cir 2006))

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1 Plaintiff has a right to timely Adequate dental
 2 care that consists of saving teeth that can
 3 be saved (See *Chance-v-Armstrong* 143 F.3d 698
 4 2d Cir 1995; *Crowley* 734 F.3d 967, 978 9th Cir, 2013;
 5 *Dixon* 843 F. Supp at 1143; *Hunt* 865 F.2d at 200)
 6 Furthermore the 8th Amendment Also Allows this court
 7 to inquire into the future harm plaintiff faces
 8 if he doesn't receive Adequate timely care
 9 (*Helling-v-McKinney* 509 U.S. 25 at 33, 113 S.Ct
 10 2475 1993. The Supreme Court held, "It would
 11 be odd to deny an injunction to inmates who plainly
 12 proved an unsafe, life threatening condition in their
 13 prison on the ground that nothing yet happened to
 14 them" *Helling* 509 U.S. at 34. In *Selah-v-Gard*
 15 255 F. Supp 2d 42 N.D.N.Y 2003 A preliminary
 16 injunction was granted to an inmate seeking a
 17 religious exemption from a TB test.
 18 As to the Four prong test the Supreme court of
 19 the United States layed out in *Winter-v-Natural*
 20 *Res. Def. Council Inc.*, 1) The Likelihood of
 21 success on the merits, well plaintiff has shown
 22 A serious medical need, the prison's denial and
 23 delay in treating the same 2) irreparable Harm,
 24 Loss of teeth, extreme pain (see *Leed-mcmanus*
 25 543 F. Supp 386 DC Kansas 1982, irreparable Harm
 26 includes pain/injury), the potential of infection and
 27 even death, 3) The Balancing of Hardships favors
 28 Plaintiff, - Here plaintiff has met this Burden,
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2 Because his only way to Access care is by and through
 3 Prison Authorities, without which, As the Supreme
 4 Court held in estelle, IF the Prison Fails to meet
 5 Plaintiff's medical Needs, those needs will not be
 6 met, causing Physical torture or a lingering death,
 7 estelle 429 U.S. at 103- 4) and whether an injunction
 8 is in the public interest. It is in the public interest to
 9 treat those the State incarcerates in a humane
 10 and dignified manner. Finally The Facts and Law
 11 must favor plaintiff if he is to get relief. The Facts
 12 are clear, The Law is clear, the prison must
 13 provide Adequate timely dental care in accord with
 14 established standards of community care, They
 15 have not, and this court can compel them to do so.
 16 The Relief plaintiff has Asked For is narrowly
 17 drawn and the Least intrusive means necessary to
 18 get plaintiff treated for pain and infection.

19

20 VII . Request for relief

21 Therefore , for good cause shown, Plaintiff
 22 requests this court issue a preliminary Injunction,
 23 directed to Defendant James D Zurenda, the Director
 24 of the Nevada Department of Corrections ("NDOC")
 25 "HDSP," To do the Following:
 26 1) To order the "HDSP" to provide Plaintiff with a
 27 Full oral exam

28 2) Upon completion of the oral exam, which ought

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2 to be conducted by a Licensed Dentist, Plaintiff
3 Cavities be treated forthwith, by providing fillings,
4 Root canals or caps, for those teeth that can
5 be saved.

6 3) For those teeth that cannot be saved, they
7 should be extracted, and Plaintiff be provided with
8 "partials", As all of the Above is not only the
9 minimum established community level of care, But
10 Also the actual Policy of "NDOC".

11 4) that treatment be Administered with 14 days
12 of service of the temporary Preliminary Injunction.

13 5) that the court order the Clerk to transmit
14 A copy of the preliminary injunction to the United
15 States Marshall, That the court order the United
16 States marshalls ("USM") to serve defendant
17 James Dzurenda at th NDOC Administrative office
18 at 3955 W. Russell Rd Las Vegas NV. 89118, and
19 that the clerk transmit a copy of the order to
20 serve to the USM, And that the Court order the
21 "USM" to effect service with 14 days of
22 the receipt By the USM.

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1 I understand that a False Statement or
 2 Answer will subject me to Penalties of Perjury
 3 and/or sanction By this court
 4

5 I, Jesse Aron Ross Declare under Penalty
 6 of Perjury under the Laws of the United
 7 States of America (Per 28 USC
 8 Section 1746) And the LAWS of the state
 9 OF NEVADA (Per NRS 53.045) that
 10 the Foregoing is true and correct to
 11 the Best of my Personal Knowledge.
 12

13 Signed on: 1 November 2017

14
 15 Signed in Clark

16 County NEVADA

X ~~Jesse Aron Ross~~
 Jesse Aron Ross

17 HDSP #1095756

18 P.O. Box 650

19 Indian Springs NV.

20 89070
 21
 22
 23
 24
 25
 26
 27
 28

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, Jesse Ross, declare:

I am over 18 years of age and a party to this action. I am a resident of HOSP
_____, Prison,
in the county of CLARK.

My prison address is: P.O. Box 650
Indian Springs NV. 89070

On 2 November,
(DATE)

I served the attached: Motion for Preliminary Injunction

(DESCRIBE DOCUMENT)

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional institution in which I am presently confined. The envelope was addressed as follows:

Director of Corrections-NDoc 3955 W. Russell
RC Las Vegas NV. 89116

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 2 November 2017
(DATE)

Jesse Ross
(DECLARANT'S SIGNATURE)

EXHIBIT

A

CASE NAME: Ross - V - Sandoval
CASE NO: 2:17-CV-02386-APG-GWF
Contains 1 page



State of Nevada Department of Corrections

INMATE GRIEVANCE REPORT

ISSUE ID# 20063045392

ISSUE DATE: 04/03/2017

INMATE NAME	NDOC ID	TRANSACTION TYPE	ASSIGNED TO
ROSS, JESSE ARON	1095756	RTRN_INF	ABUEN

LEVEL	TRANSACTION DATE	DAYS LEFT	FINDING	USER ID	STATUS
IF	05/31/2017	5	Granted	KMILLER	A

INMATE COMPLAINT

OFFICIAL RESPONSE

Please be advise that the dental department was notified about your dental issue. We will place you on the list to be seen by the dental department regarding your dental problem. Please wait until you get seen on your unit day. Thanks.

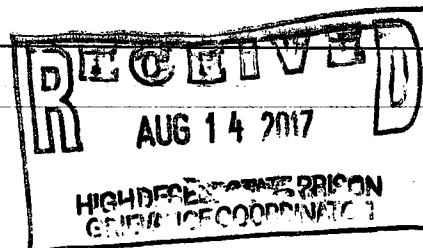
GRIEVANCE: Upheld.

A. Viner
GRIEVANCE RESPONDER

Report Name: NVRIGR

Reference Name: NOTIS-RPT-OR-0217.4

Run Date: MAY-31-17 10:42 AM

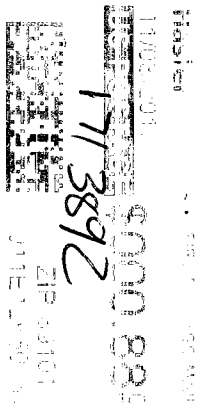


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JUN 27 2017
HDSP

Jesse Aron Ross
1095756
High Desert State Prison
PO Box 650
Indian Springs, NV 89070-0650

#342



Clerk

U.S. District Court - District of Nevada
Lloyd D. George U.S. Court House

333 Las Vegas Blvd. S.O. - RM 1339

Las Vegas NV. 89101

Legal mail